

THE EFFECTIVE DATE OF THIS ORDINANCE IS August 7, 2007

ORDINANCE # 07-26-466

AN ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND TO AMEND AND REVISE §§1-20-5(B) & 1-20-7 OF THE COUNTY'S ADEQUATE PUBLIC FACILITIES ORDINANCE

§1. Definitions. - In this Ordinance, the following terms shall have the meanings indicated:

"APFO" shall mean the County's Adequate Public Facilities Ordinance, codified as Chapter 1-20 of the Code.

"BOA" shall mean the Board of Appeals established by §1-19-29(a) of the Code.

"BOCC" shall mean the Board of County Commissioners of Frederick County, Maryland.

"Code" shall mean the Frederick County Code, 2004.

"Department" shall mean the Planning & Zoning Department established by §1-13-1(a) of the Code.

"Planning Commission" shall mean the Frederick County Planning Commission created by §1-13-16 of the Code.

"Subdivision Rules & Regulations" shall mean the County's Subdivision Rules & Regulations, codified as Chapter 1-16 of the Code.

"Vested rights" shall have its judicially determined meaning.

§2. Background. – The APFO does not define the term "parcel". APFO §1-20-5(A)(9) provides as follows:

"When a term defined in the county subdivision regulations, zoning ordinance, or the county building code, occurs in this chapter, it has the meanings specified in the subdivision regulations, zoning ordinance or building code, unless specifically defined in this chapter."

APFO §1-20-20 provides that the Department is to administer the APFO and that the Planning Commission is responsible for making determinations of adequacy.

In the course of administering the APFO and making determinations of adequacy, the Department and Planning Commission interpreted the word "parcel" in the definition of the

terms "major subdivision" and "minor subdivision" to have the same meaning as the term "original parcel" as that term is defined in the Subdivision Rules & Regulations.

On or about April 26, 2007, in a proceeding on a claim of administrative error, the BOA interpreted the word "parcel" in the definition of the term "minor subdivision" to mean a parcel of record as of 1991. The BOCC does not agree with the BOA's interpretation and desires to codify the interpretation previously applied by the Department and the Planning Commission

§3. Procedural Requirements.

(a) The BOCC initiated this Ordinance on May 10, 2007 by approving and adopting Resolution #07- 22.

(b) Pursuant to APFO §1-20-23(B), the Department referred this Ordinance to the Planning Commission for its review, comment and recommendations to the BOCC

(c) Pursuant to §1-20-23(B), the Planning Commission held an advertised public hearing on this Ordinance on June 13, 2007

(d) Pursuant to §1-20-23(B), the Department also referred this Ordinance to the municipalities within the county having adequate public facilities ordinances for review & comment and shall refer comments received from the municipalities to the Planning Commission and BOCC.

(e) Pursuant to §1-20-23(C), the BOCC held an advertised public hearing on this Ordinance on August 7, 2007

§4. Legislative Determinations. The BOCC determines that the amendments & revisions to the APFO contained in this Ordinance will be in the best interest of the citizens of the county and consistent with the general intent of the APFO.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOCC THAT

§5. Addition of Definition for "Original Parcel" to APFO §1-20-5(B). – APFO §1-20-5(B) is amended & revised to add the following definition.

"ORIGINAL PARCEL. THE TERM 'ORIGINAL PARCEL' SHALL HAVE THE MEANING SET FORTH IN §1-16-3(b) OF THE CODE."¹

§6. Addition of Definition for "Resubdivision" to APFO §1-20-5(B). – APFO §1-20-5(B) is amended & revised to add the following definition:

"RESUBDIVISION. A FURTHER DIVISION OF A PREVIOUSLY RECORDED LOT OR LOTS TO CREATE ADDITIONAL LOTS."²

¹ CAPITALIZED and underlined text indicates matter added to the existing Ordinance

² CAPITALIZED and underlined text indicates matter added to the existing Ordinance

§7. Amendment & Revision of the term "Major Subdivision". The definition of the term "Major subdivision" found in APFO §1-20-5(B) is amended & revised to read as follows:

"MAJOR SUBDIVISION. Any ORIGINAL parcel which has been or is proposed to be subdivided to create six (6) or more lots."³

§8. Amendment & Revision of the term "Minor Subdivision". The definition of the term "Minor subdivision" found in APFO §1-20-5(B) is amended & revised to read as follows:

"MINOR SUBDIVISION. Any ORIGINAL parcel which has been or is proposed to be subdivided to create five (5) or fewer lots."⁴

§9. Amendment & Revision of APFO §1-20-7. APFO §1-20-7 is amended & revised to read as follows:

"§1-20-7. EXEMPTIONS.

(A) Minor residential subdivisions, public or private elementary and secondary schools and public safety facilities are not subject to the requirements of this chapter.

(B) THE FIRST FIVE (5) LOTS FROM AN ORIGINAL PARCEL CREATED BY RESUBDIVISIONS OCCURRING AFTER DECEMBER 1, 1991.

~~[(B)]~~ (C) Any existing preliminary subdivision plat approved prior to December 1, 1991 shall be exempt from the requirements of this chapter for the following time periods as long as the preliminary approval remains valid:

(1) Residential development with valid preliminary approval:

6-100 units	3 years from December 1, 1991
101-500 units	5 years from December 1, 1991
501 + units	10 years from December 1, 1991

(2) Nonresidential development with valid preliminary approval:

0-50 acres	3 years from December 1, 1991
51-200 acres	5 years from December 1, 1991
201 + acres	10 years from December 1, 1991

(3) All plats having preliminary approval and seeking extensions of approval must comply with subdivision regulations.

(4) (Terminated as of November 30, 2005 pursuant to Ordinance 98-03-205).

³ CAPITALIZED and underlined text indicates matter added to the existing Ordinance

⁴ CAPITALIZED and underlined text indicates matter added to the existing Ordinance

~~[(G)]~~ (D) Any existing PUD with preliminary plat (Phase III) approval prior to the effective date of this chapter shall be exempt from the requirements of this chapter for the following time periods as long as the preliminary plat (Phase III) approval remains valid

6-100 units	3 years from December 1, 1991
101-500 units	5 years from December 1, 1991
501 + units	10 years from December 1, 1991

~~[(D)]~~ (E) Developments that meet the requirements of this chapter at the time of preliminary subdivision approval do not have to comply with the provisions of this chapter at the time of site plan approval.

~~[(E)]~~ (F) Any project which qualifies as "housing for older persons" defined in § 1-20-5 hereof, and which meets the following criteria shall be exempt from the schools test under this chapter

(1) The proposed project must comply with the minimum age restriction, as stated in the Fair Housing Act requirements for older persons, and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents.

(2) The zoning certificate, site plan and subdivision approvals shall limit usage of the property to ages specified by the Fair Housing Act in order to qualify as housing for older persons, as described in subsection (1) above.

(3) The proposed project shall be located in an area that will be served by both public water and sewer within a designated growth area and shall not be located within an area to be served by well or septic.

(4) The construction and development of the project must include a full program of amenities and other activities for older persons. At a minimum, the amenities must include:

(a) A trail system, walking paths, and sidewalks for pedestrian accessibility,

(b) A clubhouse/multi-purpose building(s) or equivalent space sized at 20 square feet for every dwelling unit. A minimum of 1,500 sq. ft. must be provided. The maximum square footage required shall be 20,000 square feet;

(c) Active recreational open space (for the purpose of providing amenities, including but not limited to, a swimming pool, tennis courts, chip and putt course, bocce courts, horseshoe pits, and/or similar active recreational amenities at a rate of 1/3 acre per 100 dwelling units. A minimum of 1 acre must be provided. A single large-scale amenity, such as a golf course, may not be proposed as the sole means to satisfy this requirement. Only the physical structure (i.e. footprint)

of the clubhouse/multi- purpose building(s), not the parking area(s), will be considered in determining the area of active recreational open space;

(d) Passive recreational space, including but not limited to, picnic areas, gazebos, pocket parks and/or other similar passive recreational amenities; and

(e) An appropriate phasing schedule in each phase of development to meet the needs of the residents.

(5) If, due to unusual circumstances of shape and topography or other physical features or conditions of the development, or because of the nature of adjacent developments, or due to the existence of resources that will be shared with adjacent developments, or the arc includes the adaptive reuse of an existing structure or structures, extraordinary hardship will result from strict compliance with the requirements set forth in subsections (E)(4)(a) through (E)(4)(d) of this section, the Planning Commission may grant a modification of these requirements. The applicant must submit a justification statement with its request for the modification, together with evidence that the development meets the requirements stated above for the requested modification. However, the Planning Commission may not grant a modification that will have the effect of substantially altering or nullifying the intent and purpose of this section. In granting modifications, the Planning Commission may require such conditions as are deemed necessary by the Planning Commission in its sole judgment.

(6) As part of the site plan approval process, the County Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited to housing for older persons and that appropriate enforcement mechanisms are in place to enforce the age restriction and also ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act.

(7) Prior to recordation of subdivision plats and issuance of the zoning certificate for the project, restrictive covenants must be recorded which comply with the Fair Housing Act, address senior citizen housing and the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any subsequent revisions or modifications of the covenants pertaining to age limits on occupancy shall be submitted to the Planning Commission for approval prior to recordation. Such revisions or modifications will require the re-approval of the site plan, zoning certificate, and subdivision plat(s), as necessary.

(8) Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.

(9) Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate

(10) 'Appropriate enforcement mechanisms' as used in this section shall include that the restrictive covenants for the project require the homeowners association, through a property management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children will be excluded as residents. If more than 1 homeowners association is established for the project, then the homeowners association governing the housing for older persons project shall have the primary responsibility for enforcing the age restrictions and ensuring compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents."⁵

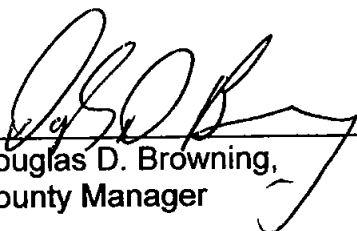
§10. Effective Date. - This Ordinance shall be effective on the 7th day of August, 2007.

§11. Retroactive Effect. - Unless retroactive application of this Ordinance would impair vested rights, the BOCC intends that this Ordinance apply retroactively

The undersigned hereby certifies that the Board of County Commissioners of Frederick County, Maryland approved and adopted the foregoing Ordinance on the 7th day of August, 2007.

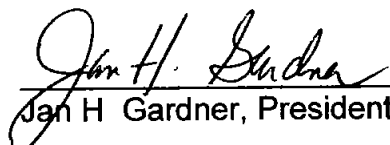
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Douglas D. Browning,
County Manager

By:



Jan H. Gardner, President

KAM
8/7/07

⁵ CAPITALIZED and underlined text indicates matter added to the existing Ordinance Text [~~within brackets and stricken through~~] represents matter deleted from the existing Ordinance